

### C. Remarks

The claims are 1-6, 23 and 24, with claim 1 being the sole independent claim. Reconsideration of the present claims is expressly requested.

Claim 1-7, 23 and 24 stand rejected has been rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Brinker. The grounds of rejection are respectfully traversed.

The presently claimed invention is directed to a porous material formed on a substrate. The porous material comprises a plurality of columnar pores, and the area surrounding the pores contains C, Si and/or Ge. Importantly, the depth direction of the columnar pores is substantially perpendicular to the substrate.

Brinker is directed to a method for forming microstructures. The Examiner continues to allege that hexagonal, cubic or lamellar ordered pores in Brinker formed by evaporation are inherently substantially perpendicular to the substrate. Applicants respectfully disagree.

Brinker teaches that in “a well-oriented hexagonally packed phase . . . the axes of the pore channels are oriented parallel to the substrate surface” (col. 6, lines 61-65) (emphasis added). Clearly, the Examiner’s allegation regarding an inherent formation of substantially perpendicular pores is incorrect. Since Brinker does not disclose or suggest forming columnar pores oriented as presently claimed, it cannot affect the patentability of the present invention.

Claims 1-12, 23 and 24 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-12, 26 and 27 of co-pending Application No. 10/640,047. Applicants note that, under M.P.E.P. § 804(I)(B), if

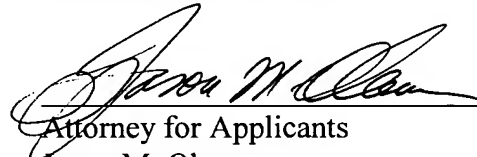
this is the only rejection remaining in the application, it should be withdrawn, so that the case can proceed to issue as a patent.

Wherefore, Applicants respectfully request that the outstanding rejections be withdrawn and that the present case be passed to issue.

This Response should be considered and entered, because it places the case in allowable form and does not introduce any new issues requiring further consideration and/or search. Alternatively, it places the case in a better form for a possible appeal.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

  
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Attorney for Applicants  
Jason M. Okun  
Registration No. 48,512

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

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